

Agenda

May 7, 2015 – 1:30 pm
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Meeting will begin at 1:30 pm
Executive Session from 1:45 pm to 3:00 pm
Regular Agenda will resume at 3:15 pm

Palm Beach County

Commission on Ethics

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West Palm Beach, FL 33401

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Commissioners

Salesia V. Smith-Gordon, Chair

Michael S. Kridel, Vice Chair

Michael F. Loffredo

Carmine A. Priore

Clevis Headley

Executive Director

Steven P. Cullen

Intake Manager

Gina A. Levesque

Staff Counsel

Christie E. Kelley

Senior Investigator

Mark E. Bannon

Investigator

Anthony C. Bennett

- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from April 2, 2015
- V. Executive Session
 - a. C15-004
 - b. C14-008
- VI. Processed Advisory Opinion (Consent Agenda)
 - a. RQO 15-012
 - b. RQO 15-013
- VII. Items Pulled from Consent Agenda
 - a.
- VIII. Proposed Advisory Opinions
 - a. RQO 15-010 (Revised)
- IX. Policy and Procedure Clarification Re: Processing of Complaints that are filed within 30 days of an Election
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**OFFICIAL MEETING MINUTES
OF THE
PALM BEACH COUNTY COMMISSION ON ETHICS
PALM BEACH COUNTY, FLORIDA**

APRIL 2, 2015

**THURSDAY
1:30 P.M.**

**COMMISSION CHAMBERS
GOVERNMENTAL CENTER**

I. CALL TO ORDER

II. ROLL CALL

MEMBERS:

Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair
Clevis Headley – Absent
Michael F. Loffredo
Carmine A. Priore

STAFF:

Mark E. Bannon, Commission on Ethics (COE) Senior Investigator
Anthony C. Bennett, COE Investigator
Steven P. Cullen, COE Executive Director
Christie E. Kelley, COE Staff Counsel
Gina A. Levesque, COE Intake Manager

ADMINISTRATIVE STAFF:

Barbara Strickland, Deputy Clerk, Clerk & Comptroller's Office

III. INTRODUCTORY REMARKS

Commission on Ethics (COE) Chair Salesia Smith-Gordon stated that a quorum existed despite Commissioner Clevis Headley's absence. She requested that mobile devices be silenced.

IV. APPROVAL OF MINUTES FROM MARCH 5, 2015

Commissioner Michael Loffredo pointed out a scrivener's error under Item IX., paragraph two. He said that the year 2015 should be corrected to 2014.

MOTION to approve the March 5, 2015, minutes as amended. Motion by Carmine Priore, seconded by Michael Kridel, and carried 4-0. Clevis Headley absent.

V. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)

V.a. Request for Opinion (RQO) 15-008

V.b. RQO 15-009

V.c. RQO 15-010

MOTION to approve the consent agenda. Motion by Michael Kridel, seconded by Michael Loffredo, and carried 4-0. Clevis Headley absent.

VI. ITEMS PULLED FROM CONSENT AGENDA – None

VII. PROPOSED ADVISORY OPINIONS

VII.a. RQO 15-007

Christie E. Kelley, COE Staff Counsel, stated that:

- The Human Resources Administrator for the City of Delray Beach (City) asked whether a conflict of interest would exist for the Special Operations Coordinator (SOC) of the City's Fire-Rescue Department if the department used Dive Gear Express (the company) as an active vendor, while the SOC's brother was employed by the company.
- The SOC currently had ultimate authority over the equipment procurement and sustainment for the City's Fire-Rescue Department, and oversaw the contracts and transactions for equipment purchases.

PROPOSED ADVISORY OPINIONS – CONTINUED

VII.a. – CONTINUED

- The Code of Ethics (Code) prohibited public employees from using their official positions to provide special financial benefits to a sibling's employer. The term "financial benefit" was broadly defined under the Code and it included any money or contract.
- A conflict of interest would arise for the SOC if the Fire-Rescue Department used the company as a vendor and entered into any contract or transaction with that company because the SOC would be giving the employer of his brother a special financial benefit.
- The company held contracts with the City approximately five years ago, but the current SOC did not hold that position during past contracts.

MOTION to accept proposed advisory opinion letter RQO 15-007. Motion by Michael Kridel, seconded by Michael Loffredo, and carried 4-0. Clevis Headley absent.

VII.b. RQO 15-011

Ms. Kelley stated that:

- A captain with the City of West Palm Beach (City) Police Department (PD) asked whether the Code prohibited the PD chief from writing a letter on official letterhead stating that the West Palm Beach Police Foundation (Foundation) was the only charitable organization that shared a partnership with the PD.
- Staff submitted that, because it was to be a generic letter that would be provided to any member of the public asking for Foundation information, such a letter was similar to a recommendation letter.
- The State Commission on Ethics previously determined that an elected official was not prohibited from writing a letter of recommendation using official letterhead, as long as no quid pro quo went to the elected official in exchange for the recommendation.

PROPOSED ADVISORY OPINIONS – CONTINUED

VII.b. – CONTINUED

- The Code would not be violated if the PD chief wrote the letter on official letterhead stating that the PD shared a partnership with the Foundation.

Chair Smith-Gordon recalled that the COE considered whether a fire-rescue member could properly wear a uniform while seeking donations. She queried whether a document requesting financial gain held any similarity to wearing a uniform for the same purpose.

Steven P. Cullen, COE Executive Director, stated that a guiding principle was that using one's position to corruptly secure a special benefit was prohibited under the Code. He said that each situation deserved individual consideration.

Ms. Kelley said that:

- The PD chief was not asking for donations, but merely mentioning a partnership with the Foundation.
- The generic letter was not addressed and mailed to individuals in the City. It merely verified the partnership's existence.
- The letter was not yet written at the time that the COE considered its merits.

Chair Smith-Gordon expressed her preference for less ambiguity to ensure more consistency in COE opinion reviews.

MOTION to table discussion until the next meeting at a time certain. Motion by Carmine Priore.

MOTION DIED FOR LACK OF A SECOND.

MOTION to accept proposed advisory opinion letter RQO 15-011. Motion by Michael Kridel, seconded by Michael Loffredo, and LOST in a tie vote. Clevis Headley absent.

Chair Smith-Gordon announced the tie, with her vote and Commissioner Priore's vote in opposition.

PROPOSED ADVISORY OPINIONS – CONTINUED

VII.b. – CONTINUED

Commissioner Carmine Priore recommended that the COE request that staff send the chair a copy of the letter under discussion for the COE to revisit at the next meeting.

Chair Smith-Gordon said that a review of the item would be scheduled.

VIII. DISCUSSION RE: DEFINITION OF “ACTIVE VENDOR”

Mr. Cullen stated that:

- While discussing RQO 14-033, a question arose as to whether the commissioner in that case received a gift from an active vendor.
- The opinion was given to Chief Assistant County Attorney Leonard Berger for input on whether a vendor was an “active vendor.”
 - The COE adopted the opinion that the vendor did not meet the definition of “active vendor” under the Code because it did not conduct business with the County for several years.
 - The Code did not define “active vendor,” so it was suggested that the COE Drafting Committee (Committee) refine the vendor language.
 - The handout materials contained staff’s suggestions for language defining “active vendor.”

Concerning the names of vendors for the past 24 months, Mr. Cullen said that:

- The County-maintained vendor database may not contain the precise information sought, and many municipalities did not maintain vendor databases.
- The last action between the vendor and the County was a payment of \$169.50 in March 2010. The opinion was rendered in 2014.

DISCUSSION RE: DEFINITION OF “ACTIVE VENDOR” – CONTINUED

VIII. - CONTINUED

- The drafted language was available to any new Committee members. New appointments would be discussed at the April 7, 2015, Board of County Commissioners (BCC) meeting.

(CLERK’S NOTE: The agenda was reordered to take public comment.)

XII. PUBLIC COMMENTS

Richard Radcliffe, Palm Beach County League of Cities (LOC) Executive Director, said that:

- The existing Committee consisted of Bill Thrasher, Mo Thornton, Trela White or her designee, and the LOC’s attorney, Jennifer Ashton. They were given direction and were prevented by the Sunshine Law (Law) from discussing it with one another.
- Ms. Ashton shared concerns with Mr. Radcliffe about the proposed language and the Law.
 - The established process indicated that additional matters should not be assigned to the Committee at this time.
 - The LOC members could not talk about Committee matters. A separate group could be formed to discuss them.
- He requested that the COE clarify the issue for elected officials who were LOC members, but refrain from discussing vendor dealings since Ms. Ashton was unable to attend today.

Commissioner Priore explained that:

- The LOC met only once a month. Members had not yet viewed or voted on proposed vendor language changes.
- Committee members were prevented from discussing the matter because they did not receive direction from the LOC’s board of directors. Until then, the Law barred discussion.

PUBLIC COMMENTS – CONTINUED

XII. – CONTINUED

Mr. Radcliffe commented that Ms. Ashton should be consulted prior to moving ahead with vendor language discussions.

Mr. Cullen said that:

- The LOC may have appointed its members to the Committee, but the BCC would appoint two more at its April 7, 2015, meeting.
 - A new Committee was not in place at this time.
 - The COE's executive director was a Committee member, by ordinance, but the Committee was not completely formed until the BCC made its choice.

Commissioner Priore commented that the COE could make its recommendations directly to the BCC for it to decide whether bring back the Committee to consider the items under discussion today. The Committee's creation was a direct responsibility of the BCC, not of the COE, he added.

Chair Smith-Gordon stated that a timeframe defining a "current" vendor should be established, since it was ambiguous as written.

Mr. Radcliffe said that legal counsel recognized ambiguous language in the Code that needed refining. He added that the LOC would choose several members to review the Code for contradictions and inconsistent language.

Mr. Cullen said that:

- The Committee would propose language changes for the BCC's review and vote.
- The COE had the option to recommend one or more changes to the BCC.

PUBLIC COMMENTS – CONTINUED

XII. – CONTINUED

- The BCC's April 7, 2015, meeting agenda contained the following item titled, "Commission on Ethics Ordinance Drafting Committee":

Staff recommends motion to approve: appointment of two of the following individuals to the Commission on Ethics (COE) Ordinance Drafting Committee: David Baker, Alan Johnson, Bruce Lewis.

SUMMARY: The Commission on Ethics (COE) requested the COE Ordinance Drafting Committee meet to consider the above referenced amendment at its meeting on March 5, 2015. The law currently provides that legally sufficient complaints proceed to a Probable Cause Hearing held by the COE. If the COE finds probable cause, the matter goes to full hearing which can be heard either by the full COE, or by three COE members selected by the Chair. The proposed amendment would allow the accused to opt to have a Hearing Officer preside over the final hearing. As proposed by the COE, hearing officers would be selected from a pool created by the Palm Beach County Bar Association.

Assistant County Administrator Brad Merriman said that:

- The process allowed two appointees to the Committee from the LOC in addition to its attorney, two appointees from the County, and COE Executive Director Steve Cullen.
- The Committee was given an issue to resolve, and its responsibility was to convene and proceed with its assignment.
- The same or a separate Committee could be given new issues to address.
- The Committee met only twice since the ordinance's inception, and should be allowed to complete its task, and then take up other matters at another time.

IX. DISCUSSION RE: "CONTEMPORANEOUS" FILING OF GIFT FORMS FOR STATE-REPORTING INDIVIDUALS

Chair Smith-Gordon stated that agenda items VIII. and IX. dealt with vendors and gift reports and went directly to the heart of complaints presented to the COE.

Commissioner Priore suggested that item IX. be discussed to agree on the action to be taken relative to the BCC.

Chair Smith-Gordon said that the item required elected officials to file gift reports with the State and with the COE at the same time, or contemporaneously.

Mr. Cullen stated that:

- The item resulted from a COE case heard in March 2015, when an elected official claimed that the ordinance did not specify precisely when a State-reporting individual was required to file a gift form.
- The COE regularly stocked gift forms and received completed forms from elected officials. The tendency was for them to be filed simultaneously, or contemporaneously, with the State.
- The COE could insert language clarifying the specified time and to prevent any future confusion concerning filing times.

MOTION to approve a recommendation that Item IX. concerning gift reports go before the Board of County Commissioners with a recommendation that it be presented to the Drafting Committee for review. Motion by Michael Loffredo, seconded by Michael Kridel, and carried 4-0. Clevis Headley absent.

MOTION to approve Item VIII. and for it to be reviewed by the Board of County Commissioners with a recommendation that proposed language changes go to the Drafting Committee. Motion by Michael Loffredo, seconded by Michael Kridel, and carried 4-0. Clevis Headley absent.

Commissioner Priore stated that a conflict may result because the BCC was already considering the probable cause issue concerning the three choices an individual would have. He said that adding a second issue may create confusion or delay a vote.

DISCUSSION RE: “CONTEMPORANEOUS” FILING OF GIFT FORMS FOR STATE-REPORTING INDIVIDUALS – CONTINUED

IX. – CONTINUED

Mr. Merriman said that:

- The BCC met every two weeks, and that the two issues could be placed on agendas two weeks apart.
- Since the LOC was meeting on April 22, and the BCC on April 21, the County could appoint its two Committee members on April 21 and the LOC could appoint its two members on April 22.

MOTION to request Board of County Commissioners consideration of the Commission on Ethics agenda items VIII. and IX. at its April 21, 2015, meeting. Motion by Michael Kridel, seconded by Carmine Priore, and carried 4-0. Clevis Headley absent.

X. EXECUTIVE DIRECTOR COMMENTS

Mr. Cullen stated that:

- Ethics Awareness Month events in March 2015 included circulation of posters, and proclamations from many municipalities, towns and cities.
- The second quarterly newsletter would be published very soon and would include today's vote on matters being forwarded for the BCC's consideration.

XI. COMMISSION COMMENTS

Commissioner Priore wished a Happy Easter and Passover season to all.

XII. PUBLIC COMMENTS – Pages 6 – 8.

XIII. ADJOURNMENT

At 2:44 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Commissioners

Salesia V. Smith-Gordon, *Chair*

Michael S. Kridel, *Vice Chair*

Michael F. Loffredo

Carmine A. Priore

Clevis Headley

Executive Director

Steven P. Cullen

April 28, 2015

Ms. Bonnie White LeMay, Administrator
Morikami Museum and Japanese Gardens
4000 Morikami Park Road
Delray Beach, FL 33446

Re: RQ015-012
Jurisdiction of the COE

Dear Ms. LeMay,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Are the employees and the Board of Trustees of Morikami, Inc. (Morikami), a non-profit partner of the County's Morikami Museum and Japanese Gardens, subject to the Palm Beach County Code of Ethics (Code)?

ANSWER:

Based on the facts submitted, neither Morikami's Board of Trustees nor its employees are subject to the Code because they are not Palm Beach County (County) or municipal officials or employees. However, any County employees who work at Morikami Museum and Japanese Gardens are subject to the Code.

The COE does not have jurisdiction over the employees or the board of trustees of a charitable organization because the jurisdiction on the COE is limited to County and municipal officials, employees, vendors, and lobbyists.¹ Under the Code, an "official or employee" is defined as an official or employee of the County or the municipalities located within the County, whether paid or unpaid.² Further, the Code defines an "official," in relevant part, as a member appointed by the board of county commissioners to serve on a County board.³ Here, the members of Morikami's Board of Trustees are not considered "officials" under the Code because none of the members are appointed by the Palm Beach County Board of County Commissioners (BCC) to sit on the board. Additionally, Morikami's employees are not County employees because the Morikami employees' salaries are funded solely by Morikami, not by the County. As such, Morikami's Board of Trustees and employees are not County officials or employees as defined by Section 2-442, and they are not subject to the Code. However, the County employees, who work at Morikami Museum and Japanese Gardens and are paid by the County, are under the jurisdiction of the COE and must abide by the Code.

¹ RQ0 11-043

² §2-442

³ *Id.*

FACTS:

You are an employee of the County, serving as Administrator of the Morikami Museum and Japanese Gardens. You direct and oversee the operations of the Morikami Museum and Japanese Gardens. The park and building of Morikami Museum and Japanese Gardens is owned and operated by the County. Morikami Museum and Japanese Gardens is staffed by County employees and Morikami employees, who work under the direction of the County's Parks and Recreation Department. Morikami is solely responsible for funding the salaries of its employees, and the County funds the positions held by County employees.

The BCC has an agreement with Morikami, a 501(c)(3) non-profit partner of Morikami Museum and Japanese Gardens, for Mutual Cooperation for the Funding, Management, Operations, and Use of the Morikami Museum and Japanese Gardens. Through this agreement, Morikami provides financial backing from membership, donations, grants and other revenue-producing activities, and volunteer support for all aspects of the institution's operations. They are permitted to fundraise and offer activities during non-public operating hours. As a non-profit, Morikami has an established Board of Trustees, who must abide by the Sunshine Law. Members of the Board of Trustees are not appointed by the BCC, and none of the Board of Trustees are County or municipal employees.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-442 of the Code:

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "employee" includes but is not limited to all managers, department heads and personnel of the county or the municipalities located within the county. The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Steven P. Cullen
Executive Director

CEK/gal



Palm Beach County Commission on Ethics

Commissioners

Salesia V. Smith-Gordon, Chair
Michael S. Kridel, Vice Chair
Michael F. Loffredo
Carmine A. Priore
Clevis Headley

Executive Director

Steven P. Cullen

April 30, 2015

Malissa S. Booth, Public Information Officer
Palm Beach Metropolitan Planning Organization
2300 N Jog Road, 4th Floor
West Palm Beach, FL 33411

Re: RQO 15-013
Gift law

Dear Ms. Booth,

Your request for an expedited advisory opinion pursuant to Commission on Ethics (COE) Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

QUESTION:

Are you, as a Palm Beach County (County) employee, allowed to accept tickets to SunFest on the two days that you are working at the event but receiving comp time from the County, and do you need to report any of the tickets you receive for volunteering at the event?

ANSWER:

Based on the facts submitted, you may accept the SunFest tickets for all three of the days you work the event's bike valet. You must report the tickets since their value exceeds \$100.

The Palm Beach County Code of Ethics allows the acceptance of tickets in connection with public events related to official County business if furnished by a nonprofit sponsor organization of the public event.¹ Here, you will be working Sunfest in your official capacity as a County employee on the two days where you will receive comp time and in your personal capacity as a volunteer on the third day. Under the facts submitted, you may accept tickets for each day you work since the tickets are coming from a sponsor organization of Sunfest. However, the Code requires that any gift over \$100 must be reported yearly to the COE on the employee's Palm Beach County gift reporting form.² Here, the value of three (3) one-day SunFest ticket is more than \$100 and must be reported.

FACTS:

You are a County employee, working in the Palm Beach Metropolitan Planning Organization (MPO) department. For several years, you have served as a volunteer at SunFest for the free bike valet, co-sponsored by the West Palm Beach Downtown Development Authority and SunFest. For each shift worked at the bike valet, the volunteers receive one ticket to SunFest, because the bike valet itself is just

¹ §2-444(g);

² §2-444(f)(2)

The Historic 1916 Palm Beach County Courthouse

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Hotline: 877.766.5920 E-mail: ethics@palmbeachcountyethics.com

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outside the festival admission gates. There is a distinction between volunteering for the bike valet and working in any of the other SunFest volunteer positions. The bike valet is an official SunFest activity located directly adjacent to the event but outside the admission gates. The other SunFest volunteer positions are located within the SunFest gates and do not require separate admission tickets to be provided to the volunteers. The value of each one-day ticket is \$40.

This year, because of the MPO's promotion of bicycling as a form of transportation, you have arranged for the MPO to provide the promotions and incentives, including an MPO banner to be hung at the bike valet to promote a new MPO website, T-shirts to be worn by the 30 bike valet volunteers that promote the MPO and the BikePalmBeach.org website, and backpacks with an imprint to promote the MPO and the BikePalmBeach.org website, to be provided to bike valet users. They are both a promotional and a safety item, as the backpacks include reflective strips to make bicyclists more visible in the dark.

You will be volunteering at three shifts on three separate days for a total of 11 hours, which entitles you to a SunFest admission for each of those three days. For working at the event, your supervisor has authorized the earning of eight comp hours, which will cover two of your three volunteer days.

LEGAL BASIS:

The legal basis for this opinion is found in the §2-444 of the Code:


Sec. 2-444. Gift law.

- i. A ticket, pass or admission in connection with public events, appearances or ceremonies related to official county or municipal business, if furnished by a nonprofit sponsor organization of such public event, or if furnished pursuant to a contract between the event's non-profit sponsor and the county or municipality as applicable, provided the sponsor organization does not employ a lobbyist, and further provided the ticket, pass or admission is given by a representative of the sponsor organization who is not otherwise a vendor, lobbyist, principal or employer of a lobbyist. Notwithstanding the exception as provided in this subsection, the ticket, pass or admission must be disclosed in accordance with the gift law reporting requirements of subsections (f)(1) and (f)(2);

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,


Steven P. Cullen
Executive Director

CEK/gal

May 7, 2015

Ms. Pamela Hart Frazier
Office of Small Business Assistance
50 South Military Trail, Suite 202
West Palm Beach, FL 33415

Re: RQO 15-010 (revised)
Gift law

Dear Ms. Frazier,

The Palm Beach County Commission on Ethics (COE) considered your request and rendered its revised opinion at a public meeting held on May 7, 2015.

QUESTION:

As a Palm Beach County (County) employee, what are your obligations under the Palm Beach County Code of Ethics (Code) when you are also a co-chair of the 2015 American Contract Compliance Association (ACCA) National Training Institute and your responsibilities include planning and organizing the event? Additional information regarding ACCA's non-profit status was received by the COE.

ANSWER:

Because the ACCA is not a non-profit charitable organization as defined by the Internal Revenue Code, as a County employee, you may not accept a donation or sponsorship on behalf of the ACCA that is over \$100 from any County vendor or lobbyist per calendar year. Furthermore, you or ACCA may not accept a gift of any value from any County vendor or lobbyist if the gift is for your personal benefit. While gifts from non vendors or non lobbyists are not prohibited by the Code, any gift over \$100 must be reported yearly to the COE. In addition, since you are a member of the ACCA's board of directors, you may not use your official position as a County employee to give a special financial benefit to yourself or ACCA or to corruptly secure any benefit for ACCA or any other person. However, other than the misuse of office provisions and gift law prohibitions, the Code does not prohibit you from planning and organizing the ACCA event on County time.¹

The Code defines a gift as anything of value received without adequate compensation, whether in the form of money, service, entertainment, hospitality, or any goods.² Under the Code, an employee is prohibited from accepting or soliciting any gift with a value over \$100 in the aggregate for the calendar year from any person or business entity that the recipient knows is a vendor or lobbyist of the County.³ The Code also prohibits County employees, or any other person on his or her behalf, from soliciting or accepting anything of value from a person or entity that the recipient knows is a vendor or lobbyist of the County, for their personal benefit.⁴ Gifts in excess of \$100 must be reported on an employee's annual Palm Beach County gift reporting form.⁵ Furthermore, public employees are prohibited from using their official position to give a special financial benefit to a non-profit organization where they serve as an officer or director and from using their official position to corruptly secure any benefit for any person.⁶

¹ RQO 11-059; RQO 11-065

² §2-444(g)

³ §2-444(a)(1)

⁴ §2-444(c)

⁵ §2-444(f)(2)b.

⁶ §2-443(a), §2-443(b)

FACTS:

Additional information regarding ACCA's non-profit status was received by the COE. Based on the information provided, the ACCA does not fit the definition of a non-profit charitable organization as defined under the Internal Revenue Service Code. The ACCA is a non-profit business league organization.

You are an employee of the County, serving as a Small Business Development Specialist in the Office of Small Business Assistance. You are a member of the ACCA's board of directors, and you are one of the co-chairs of the 2015 ACCA National Training Institute, which will be held in West Palm Beach, Florida. ACCA is a non-profit organization dedicated to delivering ongoing comprehensive training and certification to individuals working within the fields of Affirmative Action, Contract Compliance, Minority/Women/Disadvantaged/Small/Emerging Business Enterprise, Labor Compliance, Economic & Business Development, and Equal Employment Opportunity. Your responsibilities as the co-chair of the local planning committee may include locating sponsors, speakers, and workshop presenters, making reservations, and arranging activities for the participants while they are in West Palm Beach. You would like to organize and prepare for the event occasionally during work hours as allowed. The conference will be held August 25, 2015 – August 30, 2015.

LEGAL BASIS:

The legal basis for this opinion is found in §2-443(a)(7) and (b), §2-444(a)(1), (c), (f)(2)b., and (g) of the Code:

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

Sec. 2-444. Gift law

- (a)(1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (c) No county commissioner, member of a local governing body, mayor or chief executive officer when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee.

- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (2) *All other officials and employees who are not reporting individuals under state law.*
- b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted, but assume they are true for purposes of this advisory opinion. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Steven P. Cullen
Executive Director

CEK/gal

IX Policy and Procedure Clarification Re: Processing of Complaints that are filed within 30 days of Election (Previously prepared for July 7, 2012 meeting - presented at August 2, 1012 meeting)

Background:

Staff was requested to review the applicable codes and rules of procedure to determine protocol for complaints filed within 30 days of an election and if a change in rules on the issue is warranted.

Staff Analysis:

Both the Palm Beach County Commission on Ethics Ordinance and the Commission Rules and Procedures are silent as to when a complaint may be filed. Likewise, there is no time constraint regarding the filing of a complaint prior to an election. Aside from legal sufficiency requirements, a complainant may file his or her complaint at any time. Nor is there any requirement that a complainant withhold the filing of a complaint from public disclosure. The COE does not possess the power to order a complainant to not disclose the filing of a complaint or the supporting documentation provided by, and in the possession of, the complainant. Notwithstanding, pursuant to §2-260(g) public records exemption, "The complaint and all records held by the commission on ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure..." This exemption is also found in COE Rule of Procedure 3.3. Consistent with §2-257 of the COE Ordinance pertaining to organization, the COE Executive Director has adopted personnel and management policies, including policies pertaining to staff response to public inquiries involving ongoing investigations that are not yet public record. Office Policy and Procedure 6.1 prohibits staff from commenting on "any matter that is not a public record."

While it may be within the power of the COE to promulgate a rule of procedure interpreting the public records exemption mandated by the Code to include a freeze on the acceptance of a complaint within a reasonable time prior to an election, the fact that the complaint process itself takes some time before records become public would seem to make such a finding unnecessary.

Staff recommendation:

No action by the COE is warranted.

Minutes from presentation made during August 2, 2012
COE meeting.

**X. POLICY AND PROCEDURE CLARIFICATION RE: PROCESSING OF
COMPLAINTS THAT ARE FILED WITHIN 30 DAYS OF AN ELECTION**

Mr. Johnson said that:

- Commissioner Fiore expressed concerned about how the COE processed complaints that were filed within 30 days of an election.
- Staff would determine that safeguards were already in place and whether any opportunity existed within the Code and the COE ordinance to put greater precautions in place.
- The COE's rules of procedure and ordinance controlled the timing of when a complaint would become public.
- Staff had recommended that the COE not change and ban complaints within the 30-day timeframe.
- Individuals could not be stopped from sending complaints, and staff would only be allowed to inform the media that they could neither confirm nor deny the information.
- The process remained private so that at any time, a respondent was not unduly tried and convicted before a COE determination occurred. He added that since significant and appropriate safeguards were in place, no action was warranted at that time.
- Mistakes would not occur currently since policies and procedures were in place.

Commissioner Farach said that in the past, sitting officials had been the target of ethics complaints by opponents, and the COE was concerned that those ethics complaints were done for purely political reasons and not for a true Code violation.

Mr. Radcliffe responded that the League of Cities agreed with staff's intent, and it was encouraged that policies and procedures were already in place.